HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 783 of 2004 (M/S)

Manoj Kumar Jain

Vs

Addl. District Judge,
Dehradun & others

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 23.08.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 783 of 2004 (MS)

Manoj Kumar Jain ..... Petitioner

Versus

Addl. District Judge, Dehradun & others ..... Respondents

Sri Sharad Sharma, Advocate for the petitioner
Standing counsel for the respondents.

Dated: 23.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 14.7.2004 passed by the Addl. District Judge, Dehradun.

Briefly stated the respondent no.2 has filed an application under section 21 (1) (a) of U.P. Act No. XIII of 1972 being case No. 14 of 2000 on the ground that the landlord respondent no.2 requires the premises for his personal use and occupation. The application was contested and the opposite party has filed written statement. The prescribed authority vide order dated 12.8.2002 has allowed the application. Appeal was preferred and during the pendency of the appeal the petitioner has moved application under section 34 of the Act seeking amendment in the written statement before the Court.

The respondent no.2 has filed his objection against the amendment application. The amendment application was rejected by the prescribed authority. A perusal of the amendment application shows that the petitioner wanted to add paragraph 38 to the following effect:

"As per the own admission of the petitioner as contained in the notice dated 17.12.1999, the shop in question was let out to Sri Beni Prasad Jain and not to the opposite party. Thus the petitioner claims Sri Beni Prasad Jaina to be his tenant. As per law application u/s 21 of U.P. Act no. 13 of 1972 can be maintained against a tenant only. The provisions of U.P. Act No. 13 of 1972 are applicable to the shop in question. The release application against the opposite party would not lie as according to the petitioner neither the opposite party is the tenant not a tenant who has been inducted as a tenant as per the provisions of U.P. Act No. 13 of 1972. The release application is liable to be dismissed on this ground itself."

In the order passed by the prescribed authority only this fact has been mentioned that provisions of U.P. Act No. 13 of 1972 being applicable to the shop in question and , therefore, the application will not be maintainable as the opposite party is neither a tenant not a tenant who has been inducted as a tenant as per provisions of U.P. Act No. XIII of 1972.

Section 10 of the act provides as under:

10. Appeal agisnt order under sections [8, 9 and 9-A]- *(1) Any person aggrieved by an order of the District Magistrate under Section 8 or section 9 [or ssection 9-A] may, within thirty days from the date of the order, prefer an appeal against it to the District Judge, and the District Judge may either dispose it of himself or assign it for disposal*

to Additional District Judge under his administrative control, and may recall it from any such officer, or transfer it to any other such officer.

(2) The appellate authority may confirm, vary or rescind the order or remand the case to the District Magistrate for rehearing, ***and may also take any additional evidence,*** *and pending its decision, stay the operation of the order under appeal on such terms, if any, as it think fit.*

3. No further appeal or revision shall led against any order passed by the appellate authority under this section, and its order shall be final."

A perusal of section 10(2) shows that the appellate court has power to admit additional evidence. So far as the plea with regard to letting the premises in favour of Sri Beni Prasad Jain, father of the petitioner, is concerned, liberty is given to the petitioner to raise this plea in the appeal.

Further regarding applicability of Act No. XIII of 1972, is concerned it has been held in the case Shankar Lal Kandelwal vs. IVth ADJ. Mathura [ARC 1998 (2), 506. , that the petitioner having himself admitted that the respondent is the landlord and he is tenant of the disputed accommodation on monthly rent of Rs.250/-, it is not open for the petitioner to raise that he is unauthorised occupant.

Further the Apex Court in 2002 (2) ARC 645, Nutan Kumar and others vs. 2nd Addl. District Judge and others, has held as under:

"In the case of Nanakram vs. Kundalraj, 1986 (2) SCR 839: (1986) 3 SCC 83: the question was whether a lease in violation of statutory provision was valid, it was held that in the absence of any mandatory provision obliging eviction in case of contravention of the provisions of the Act the lease would not be void and the parties would be bound, as between themselves, to observe the conditions of lease. It was held that neither of them could assail the leased in a proceeding between themselves. This authority was in respect of Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, whereunder also the landlord was obliged to intimate a vacancy to the Deputy Commissioner of the District and the Deputy Commissioner could allot or direct the landlord to let the house to any person. The provisions were more or less identical to the provisions of the said Act. This authority has directly dealt with the questions under consideration and answered them. The majority judgment takes note of this authority and hold as follows:

"With utmost humility and reverence it is stated that above observations are not compatible with provisions of Sections 10 and 23 of the Contract Act. Otherwise also, it is most respectfully pointed out that the statement of law contained in the said observation is, perhaps, in conflict with the law declared in the decisions of the Hon'ble Supreme Court in ***Waman Shriniwas Kini v. Rati Lal Bhagwan Das and co. 1959 (Supp 2) SCR 217; Shrikrishna Khanna v. Additional District Magistrate, Kanpur and others, 1975 (3) SCR 709; and Manna Lal Khetan v. Kedar Nath Khetan 1977 (2) SCR 190"***

The respondent no.3 has stated in paragraph 1 that he is landlord and opposite parties and tenants on a monthly rent of Rs.150/-. This fact has been admitted in paragraph 1 of the written statement. However, plea being unauthorised occupants being legal plea as well as plea with regard to the fact that father of the petitioner was tenant, both the pleas can be taken by the petitioner in the appellate court for which no amendment is required. Both the pleas being legal and the same can be permitted to be raised at the appellate stage, as provided under section 10 (2) of U.P. Act No. XIII of 1972.

Subject to the aforesaid observation, the writ petition is dismissed.

(Rajesh Tandon J.)

23.8.2004
*Dhyani